Herman Brothers, Inc. *and* Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO.[1] Case 14–CA–20819

May 26, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

On November 25, 1991, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a brief in support.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings,[2] findings, and conclusions and to adopt the recommended Order.

In its exceptions, the Respondent argues, among other things, that the 13-month hiatus in bargaining between October 12, 1988, and November 27, 1989, and the fact that it—rather than the Union—was responsible for calling the November 1989 meeting shows that the Union was intractably refusing to bridge the parties' differences. The Respondent argues that the parties were therefore at impasse when the Union did not meet the December 11, 1989 deadline which the Respondent had decreed for acceptance of its new ''final proposal'' which it presented at the November 27 meeting. We disagree.

The only witness to testify at the hearing was the Union's business representative, Danny Fessenden. We find no basis in Fessenden's testimony for concluding that there was no possibility of reaching common ground during that 13-month hiatus.[3] The Respondent put in no evidence that, during that time, it ever brought matters to a head on the basis of proposals then on the table. In other words, during that 13-month period the Respondent did not put the Union to the test by announcing that it had issued its final proposal and was declaring impasse.

When the Respondent did issue its ultimatum in November 1989, it did so on the basis of a proposal that, as the judge correctly found, was so different from proposals then on the table that further bargaining was clearly required before impasse could be reached, even if only to provide the Union a basis for understanding the economic significance of the totally new wage formula. The Respondent's contention that it was justified by deteriorating economic circumstances in presenting a new, more regressive proposal militates against its impasse claim. If new circumstances existed, there was all the more reason that further discussions with the Union might prove fruitful. Instead of first exploring the significance of the changed circumstances with the Union, however, the Respondent characterized its new proposal as ''final'' and issued its ultimatum on the very day it presented the proposal to the Union. We therefore agree with the judge that there was no genuine impasse on December 18, 1989, when the Respondent implemented the proposal, and the Respondent accordingly violated Section 8(a)(5) and (1) of the Act by this action.[4]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Herman Brothers, Inc., Clarksville, Missouri, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

---

[1] The name of the Charging Party has been changed to reflect the new official name of the International Union.

[2] The Respondent has excepted to the judge's rulings, findings, and conclusions on the grounds that they demonstrate bias and prejudice. On careful examination of the judge's decision and the entire record, we are satisfied that such contentions are without merit.

[3] There is no merit to the Respondent's suggestion that Fessenden's testimony that the parties were ''far apart'' during the hiatus and that he saw ''no point in pushing the issue'' establishes that the Union was adamant and would refuse to make any changes in its proposals during further negotiations. Fessenden's testimony on this matter was follows:

> [A]t that point, basically, we were far apart in our proposals and the company and I had agreed to continue working under the expired agreement. The employees were still being paid their regular rates of pay and I saw no point in pushing the issue at that point to settle the contract.

This testimony is entirely consistent with a view on the part of the Union that negotiations would undoubtedly end in an agreement providing reduced wages and benefits for employees, and the Union therefore had nothing to gain by pressing for a speedy conclusion. The Union did not, however, resist requests for negotiations. According to Fessenden's credited testimony, he and Lyman Bell, the Respondent's representative, had several telephone conversations during the 13-month period, and he told Bell that he was available to meet at any time.

[4] We do not rely on the evidence of postimplementation negotiations in affirming the administrative law judge's finding of a violation.

Mary J. Tobey, Esq., for the General Counsel.
Walter H. Flamm Jr., Esq., Philadelphia, Pennsylvania, for the Respondent.
Brian A. Spector, Esq., St. Louis, Missouri, for the Charging Party.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge. On a charge filed on June 14, 1990, by Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO (the Union), against Herman Brothers, Inc. (the Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 14, is-

sued a complaint dated September 11, 1990, alleging violations by Respondent of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act (the Act). Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, a hearing was held before me in St. Louis, Missouri, on April 2, 1991, at which all parties were represented by counsel and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. Thereafter, the General Counsel and the Respondent filed briefs which have been duly considered.

On the entire record in this case, and from my observations of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a Missouri corporation, maintains an office and terminal facility in Clarksville, Missouri, where it is engaged in the interstate tranportation of freight and other commodities. Annually, Respondent, in the course and conduct of its business operations at Clarksville, derives gross revenues in excess of $50,000 from the transportation of such freight and commodities, from the facility, to points located outside the State of Missouri. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Background*

The Union has represented Respondent's employees working at the Clarksville terminal since 1962. The bargaining unit currently includes 17 drivers, who haul bulk cement, and 1 mechanic. Respondent and the Union have been parties to numerous collective-bargaining agreements, the most recent of which expired on June 30, 1988. Following contract expiration, they engaged in bargaining, looking toward conclusion of a successor agreement. However, negotiations did not result in a new contract and, on December 18, 1989, Respondent implemented its ''final offer.''

In the instant case, the General Counsel contends that, by unilaterally implementing changes in established rates of pay, benefits, and other terms and conditions of employment, in December 1989, Respondent breached its bargaining obligation, in violation of Section 8(a)(5) of the Act. Respondent asserts that it was privileged to implement its ''final offer'' as, at the time that it acted, the prospects of concluding a new agreement had been exhausted and negotiations were at an impasse.

B. *Facts*

The facts in this case are not in dispute and may be summarized, as follows:

Historically, Respondent and the Union have been signatories to the successive Master Cement and all Dry Bulk Commodities Agreements, covering employees of signatory employers located in the central States of the United States. They have also negotiated supplemental agreements covering wages, and other terms and conditions of employment, applicable only to Respondent's employees. The supplemental agreements have had the same effective dates as the Master contracts.

On April 13, 1988, the Union sent a letter to Respondent reopening the then soon to expire contracts for negotiations. On April 27, Respondent, by letter, informed the Union that Respondent was not ''a part of any multiemployer bargaining unit or employer association,'' but stood ready to negotiate a new collective-bargaining agreement, covering its employees, with the Union.Thereafter, the parties agreed to continue to give full force and effect to the terms of the expiring agreements, and to postpone negotiations for a new agreement until after the new Master contract was completed.

The parties' first bargaining meeting was held on August 3, 1988. At that time, the Union's business representative, Danny Fessenden, presented to Lyman Bell, Respondent's director of terminals, a copy of the then recently concluded Master agreement. Fessenden stated that he was there to negotiate the new Master Cement Agreement, and he reviewed its provisions. That agreement provided for maintenance of existing health and welfare benefits, requiring an increase in employer contributions to the Central States Health & Welfare Fund, from $66.70 per employee per week to $88.77 in the first year of the agreement, to $96.78 in the second year and to an undetermined amount in the third year. Maintenance of then existing pension benefits, as called for in the new Master agreement, required an increase in contributions to the Central States Pension Fund, from $61 per employee per week to $69 to $73.

Bell stated that Respondent would not sign the Master Cement Agreement and he proposed that the parties enter into a ''white paper agreement,'' that is, a contract independent of the Master agreement. He presented the Union with written proposals calling for a reduction in wages from $10.94 per hour to $9.80, a reduction in the mileage rate paid drivers on certain trips, in lieu of the hourly rate, from 29.3 cents to 26 cents, a reduction in holidays from 10 to 7, a reduction in the recall rights of laid-off employees from 3 years to 6 months, a reduction in holiday pay from twice the hourly rate to a straight time rate and a reduction in the maximum vacation period from 4 weeks to 3 weeks. The proposals also called for maintenance of then existing contributions to the health and welfare and the pension funds, which would have required switching to plans providing lesser benefits. Lesser wage rates and benefits were proposed for newly hired employees, as well as medical coverage under the company plan, and a 401(k) plan, in place of the Central States funds.

The parties met again on August 4. Fessenden stated that he had studied Respondent's proposals but was unwilling, at that point, to sign a white paper agreement. He said that the Union was again asking Respondent to sign the Master contract and, then, the parties could work out any relief needed by Respondent in a supplemental agreement. Bell responded, stating that, in view of the Company's economic condition, and its need to stay competitive, it could not afford the Master agreement's wage rates and benefit levels, and it did not want to utilize the contractual grievance procedure. Respondent and the Union discussed each other's proposals and agreed to meet again.

At a meeting held on September 8, the union representatives reiterated their desire to sign the Master contract with necessary relief to be provided in a supplemental agreement. Respondent's representatives stated that they were not refusing to do so, but that they preferred the approach of a white paper agreement. The Union pointed to those of Respondent's competitors who had signed the Master agreement and claimed that Respondent could do so and remain competitive. The Company refused to sign the Master agreement at that time, but agreed to further study it and asked that the Union further study its proposals.

The parties next met on October 12, 1988. The Union restated its position with regard to the Master agreement and a supplemental, and Respondent stated that it could not afford the Master agreement and would like to see wages reduced to $9.61 per hour, less than it had proposed in August. Respondent reiterated its desire to negotiate a ''two-tier'' system of wages and benefits under which then current employees would be covered by the Central States insurance and pension plans, and new employees would be covered by the company medical plan and a 401(k) plan. The Union responded, stating that it was unsure if the Central States plans would even allow for a two-tier system. It asked that a copy of Respondent's medical plan be furnished. The parties discussed the Company's economic state, and they ended the meeting agreeing to check on insurance matters. A few days later Fessenden placed a telephone call to Bell and advised him that the Central States funds would not allow a two-tier system for health and welfare and pension purposes.

Respondent and the Union did not meet again for a period of 13 months, each apparently willing to continue to operate under the provisions of the expired contracts. Late in November 1989, Bell placed a telephone call to Fessenden asked for a meeting and advised Fessenden that the Company would present a new proposal.

When the parties met on November 27, 1989, Bell presented a new written proposal to the Union, which he termed a ''final proposal.'' It was radically different, in concept and in terms, from Respondent's previous offer and called for wages of 21 percent of gross revenues in lieu of hourly and mileage rates, pension plan contributions not to exceed $20 per employee per week, the company health plan, six holidays, and a maximum of 2 weeks' vacation.

Respondent and the Union discussed the Company's new proposal, item by item. Fessenden asked Bell exactly what 21 percent of revenues would amount to in terms of wages. Bell stated only that it would be 21 percent of revenues. Fessenden asked if under the 21-percent formulation wages on certain trips could drop to $5 per hour. Bell said, yes, but in that event there would be no need for the Company to haul the load.

Regarding pensions, Fessenden stated that Respondent was then paying $61 per week, and would have to go to $69 to maintain benefits, yet, was proposing to drop the contribution to $20 per week. He asked why Respondent was proposing a decrease of that magnitude. Bell replied, stating that economically that was what the Company had to do. As to health and welfare, Fessenden said that the employees needed to retain the Central States plan. He asked Bell what type of plan the Company maintained. Bell stated that he would have to get a copy of the plan in order to ascertain its coverage. He believed that the plan had a deductible amount of $250 and, unlike the Central States plan, did not provide coverage for dependents. Regarding holidays and vacations, Bell said that Respondent's proposals were necessitated by economic conditions. Fessenden told Bell that he could not believe that Respondent had made that type of proposal as, in past meetings, cuts of such magnitude had not been sought. He asked Bell why he was making such a proposal. Bell stated that that was what Respondent needed in order to be competitive. Bell further stated that the offer was a ''final proposal,'' and that he wanted Fessenden to take it to his membership for a vote. Fessenden asked for further negotiations in order to resolve the matter. Bell said,''no.'' He told Fessenden that the proposal was what Respondent needed and that he, Bell, wanted a membership vote on it. Fessenden stated that he would take it to the membership for a vote, but would not recommend acceptance or rejection. He predicted that the membership would turn it down.

On November 30, 1989, Bell sent a letter to Fessenden which characterized the offer of November 27, as ''final.'' Fessenden was further advised that if the Union did not respond to the offer by December 11, Respondent would assume that the parties were at impasse and would proceed to implement its proposals, effective December 18, 1989. On December 13, Fessenden placed a telephone call to Bell and advised him that the membership unanimously had rejected Respondent's offer. Fessenden asked for another meeting. Bell agreed, but reiterated Respondent's determination, over objection of the Union, to implement its proposal on December 18. On December 19, Bell sent a telegram to Fessenden advising him that Respondent was, in fact, implementing its ''final offer,'' effective December 18.

The parties did not meet again until February 28, 1990. At that time, the Union again asked that the parties sign the Master contract and a supplemental agreement. Fessenden agreed to a reduction in wages from $10.94 per hour to $10, and a reduction in the mileage rate from 29.3 cents per mile to 27 cents. He stated that this would resolve the competitiveness issue. Bell said that Respondent might agree to pay for the Central States Health and Welfare plan, or the pension plan, but not both. Fessenden noted that that represented a huge increase from what was contained in the Company's ''final proposal.'' Bell stated that Respondent wanted to take care of the employees. When Fessenden again asked for the Master contract and a supplemental agreement, Bell said that he would take another look at the Union's proposal, in light of its new offer on wages.

The next bargaining session was held on March 14. Bell rejected the Union's renewed proposal of the Master contract and a supplemental, and gave Fessenden a printout showing a sampling of wages paid to drivers under the 21 percent of revenues, system. Bell suggested that the drivers were making more money under the new system; as much as $12 to $14 per hour. Fessenden said that under that system driver rates could, in some cases, fall to $5 per hour. He further stated that the Union would be willing to look at the 21-percent-of-revenues plan if it were coupled with a $10-floor rate. Bell said that Respondent would be willing to entertain and study that proposal. He further stated that if the Union would agree to a white paper contract things would be settled quickly. Bell told Fessenden that Respondent would agree to maintain the Central States Pension plan for vested employees.

The final meeting of the parties occurred on May 14, 1990. Fessenden asked for the Master contract and a supplemental, and Bell turned him down. Respondent asserted that the terminal was losing money and handed to the Union a computer printout of expenses. As Fessenden could not determine from those documents if, in fact, the terminal was operating at a loss, he asked to see the home office books. Bell said that he would have to find out whether those records would be made available. Bell again said that if the Union agreed to a white paper contract, everything would be resolved easily. Fessenden said that the Union would have to take some kind of action. Thereafter, he filed the charges giving rise to the instant case.

C. *Conclusions*

The Act requires that the parties bargain in good faith until an agreement is reached or until any realistic possibility of reaching agreement is exhausted. An impasse exists in the latter situation and an employer is, then, privileged to put into effect its pre-impasse proposals.[1]

In the instant case, Respondent asserts that when, on December 18, 1989, it unilaterally implemented its November 27, 1989 proposals, a genuine impasse in negotiations existed, privileging its action. This contention must be assessed under standards established in precedent cases requiring the party claiming impasse to show that, despite the parties' best efforts to achieve an agreement, neither party was willing to move from its position. Until the collective-bargaining process has been exhausted, no impasse can occur.[2]

As shown in the statement of facts, the parties commenced negotiations on August 3, 1988, and held but four meetings that year. Throughout those bargaining sessions, Respondent sought only moderate reductions from the then existing wage and benefit levels as well as a two-tier system and a white paper agreement. The Union's approach to the matter was to have the parties sign the Master agreement, with needed economic relief to be provided in a supplemental contract. Neither party refused to consider the other's approach or terms. The parties then suspended negotiations for 13 months, each apparently willing to continue to operate under the terms of the expired agreements.

Respondent's November 27, 1989, ''final proposal,'' not only called for drastic reductions in existing benefit levels, it called for far more sweeping reductions than those it had previously sought. Moreover, the November 27 proposal called for an entirely new system of wage calculation, based on percentage of gross revenues, the effects of which Respondent itself could neither predict nor explain. Respondent rebuffed the Union's request for further negotiations, insisted that the proposal was final and demanded an immediate ratification vote by the Union's membership. It made clear its intent unilaterally to implement the proposal if the membership's approval was not forthcoming.

When Respondent, on November 27, 1989, after a long hiatus in negotiations, presented a proposal radically different, in both concept and terms, from its previous proposals, it was obligated to give the collective-bargaining process a chance. Instead, it followed its precipitous presentation of a ''final proposal'' with a demand for immediate ratification under threat of unilateral implementation. It is difficult to interpret Respondent's actions in this regard as other than those of an employer with a fixed intent to implement its proposal regardless of the status of negotiations with the Union. It was unwilling to await the outcome of a good-faith, collective-bargaining process.[3] This pell-mell rush to artificial impasse did not create the genuine exhaustion of the bargaining process which would privilege unilateral implementation.

Further evidencing the fact that the parties were not at impasse on December 18, 1989, when Respondent unilaterally implemented its proposal, is the flexibility shown on both sides and concerning the major issues in the post-implementation meetings. At those sessions, Respondent indicated a willingness to accede to the Union's position on either health and welfare or pension, but not both. It was willing to entertain the Union's proposal that the system of calculating wages as a percentage of gross revenues be augmented with a floor rate. For its part, the Union offered reductions in wage rates and mileage pay. There was, in short, significant movement on both sides. In these circumstances, it cannot be said that the parties had exhausted any realistic possibility of reaching agreement.

Based on the foregoing, I conclude that on December 18, 1989, when Respondent unilaterally implemented its ''final offer,'' a genuine impasse in negotiations had not occurred. Accordingly, Respondent failed to meet its bargaining obligation, in violation of Section 8(a)(5) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(5) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that Respondent be ordered to bargain, on request, with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. I shall also recommend that Respondent be ordered, on request, to restore the status quo ante and rescind the unilateral changes made commencing December 18, 1989, and to make all affected employees whole for losses they incurred by virtue of the unilateral changes, from December 18, 1989, until Respondent negotiates in good faith with the Union to agreement or to a valid impasse. If the Union elects to have previous conditions restored, calculations of the sums and payments necessary to make employees whole, with interest, shall be made in accordance with normal Board policy. See *Ogle Protection Service*, 183 NLRB 682 (1970); *New Hori-*

[1] *Taft Broadcasting Co.*, 163 NLRB 475 (1967); *D.C. Liquor Wholesalers*, 292 NLRB 1234 (1989).

[2] *Excavation-Construction*, 248 NLRB 649 (1980).

[3] See *Howard Electrical & Mechanical*, 293 NLRB 472 (1989); *Stephenson-Yost Steel*, 294 NLRB 395 (1989).

zons for the Retarded,[4] 283 NLRB 1173 (1987); M*erryweather Optical Co*., 240 NLRB 1213 (1979).

CONCLUSIONS OF LAW

1. Herman Brothers, Inc. is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. Teamsters Local Union No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All truckdrivers and mechanics employed by Respondent at its Clarksville, Missouri facility, excluding office clerical and professional employees, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material the Union has been, and is now, the exclusive representative of all employees in the aforesaid bargaining unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. By unilaterally implementing changes in the wages, benefits, and other terms and conditions of employment of the bargaining unit employees, Respondent refused to bargain in good faith with the Union, as exclusive representative of the bargaining unit employees, concerning rates of pay, wages, hours, and other terms and conditions of employment, and thereby, engaged in unfair labor practice conduct within the meaning of Section 8(a)(5) of the Act.

6. The aforesaid unfair labor practices affect commerce within meanging of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Herman Brothers, Inc., Clarksville, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain in good faith concerning rates of pay, wages, hours, and other terms and conditions of employment with the Union as the exclusive bargaining representative of its employees in the appropriate unit.

(b) Unilaterally implementing changes in the wages, benefits, and other terms and conditions of employment of the bargaining unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) On request of the Union, rescind the unilateral changes in the unit employees' wages, benefits and other terms and conditions of employment that were made commencing December 18, 1989, and make the employees whole, with interest, for losses they incurred as a result of the unilateral changes, from December 18, 1989, until Respondent negotiates in good faith with the Union to agreement or to a valid impasse, in the manner set forth in the remedy section of this decision.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay and other moneys due under the terms of this Order.

(d) Post at its Clarksville, Missouri facility copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent's representative, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

[4] Interest on or after January 1, 1987, shall be computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621. Interest on amounts accrued prior to January 1, 1987 (the effective date of the 1986 amendment to 26 U.S.C. § 6621), shall be computed in accordance with *Florida Steel Corp*., 231 NLRB 651 (1977).

[5] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with Teamsters Local Union, No. 688, affiliated with International Brotherhood of Teamsters, AFL–CIO, as the exclusive bargaining representative of our employees, in the appropriate bargaining unit:

> All truckdrivers and mechanics employed at the Clarksville, Missouri facility, excluding office clerical and professional employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally implement changes in the wages, benefits, and other terms and conditions of employment of the bargaining unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of all employees in the appropriate unit, described above, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

WE WILL, on request of the Union, rescind the unilateral changes in the unit employees' wages, benefits, and other terms and conditions of employment that were made commencing December 18, 1989, and WE WILL make the employees whole, with interest, for losses they incurred as a result of the unilateral changes, from December 18, 1989, until we negotiate in good faith with the Union to agreement or to a valid impasse.

HERMAN BROTHERS, INC.